

RETURN DATE: OCTOBER 11, 2016	:	SUPERIOR COURT
	:	
	:	J.D. OF LITCHFIELD
	:	
IN RE HELEN M. BOCHICCHIO	:	AT LITCHFIELD
REVOCABLE TRUST APPEAL FROM	:	
PROBATE	:	SEPTEMBER 12, 2016

### **COMPLAINT**

#### **FIRST COUNT- APPEAL FROM PROBATE.**

##### **I. PROCEDURAL HISTORY:**

1. On August 12, 2016, the Litchfield Hills Probate Court, the Honorable Diane S. Blick, Probate District No. 24 (the "Probate Court"), issued its Decree on an Application for Removal of Trustee and Approval of Interim Financial Report for the period of April 17, 2014 through March 31, 2016 (the "Decree").

##### **Exhibit A.**

2. The Probate Court, in its Decree, removed Ginger Bochicchio ("Ms. Bochicchio") as Trustee of the Helen M. Bochicchio Revocable Trust (the "Trust").
3. Also in its Decree, the Probate Court denied approving the May 6, 2016 Financial Report and June 17, 2016 Amended Financial Report.

##### **II. STATEMENT OF FACTS:**

4. The Decedent, Helen Bochicchio, executed the Trust on April 25, 1994.
5. Pursuant to Article II of the Trust, Helen Bochicchio appointed herself and her husband, Michael Bochicchio as Trustees of the Trust.

6. Also pursuant to Article II of the Trust, Helen Bochicchio appointed her daughter, Ms. Bochicchio, as successor Trustee of the Trust.
7. On April 5, 2004, Helen Bochicchio executed the First Restatement of the Trust.
8. Thereafter, on February 13, 2009, Helen Bochicchio executed the First Amendment to the Trust.
9. On November 13, 2013, Helen Bochicchio's husband, Michael Bochicchio, passed away.
10. On April 17, 2014, Helen Bochicchio passed away.
11. Upon Helen Bochicchio's death, Ms. Bochicchio became the Trustee of the Trust in accordance with Article II.
12. After Ms. Bochicchio served as Trustee for 21 months, on January 14, 2016, Bruce Bochicchio ("Mr. Bochicchio"), Helen Bochicchio's son and Ms. Bochicchio's brother, filed a Motion to Compel Accounting, seeking the Probate Court to order Ms. Bochicchio to account for her actions as Trustee of the Trust.
13. On March 4, 2016, the Probate Court held a hearing on the Motion to Compel Accounting and ordered Ms. Bochicchio file an accounting for the period of April 17, 2014 through March 1, 2016.
14. On May 6, 2016, Ms. Bochicchio filed a Financial Report accounting for her actions as Trustee for the period of April 17, 2014 through March 31, 2016.

15. On June 17, 2016, Ms. Bochicchio filed an Amended Financial Report for the same period.
16. Also on June 17, 2016, the Probate Court held a hearing on the Financial Report.
17. During that hearing, the Probate Court purportedly issued an oral decision directing Ms. Bochicchio to file an accounting of the Trust for the period of April 17, 2014 through March 31, 2016.
18. The Probate Court never issued a written order directing Ms. Bochicchio to file an accounting from its purported June 17, 2016 oral decision.
19. Then, on August 12, 2016, the Probate Court issued its Decree removing Ms. Bochicchio as Trustee of the Trust.
20. The Probate Court, in its Decree, also denied approving both the May 6, 2016 Financial Report and June 17, 2016 Amended Financial Report.
21. The Probate Court based its removal of Ms. Bochicchio on Ms. Bochicchio's failure to honor its purported oral decree at the June 17, 2016 hearing to file an accounting.

**III. AGGRIEVEMENT:**

22. Ms. Bochicchio is aggrieved by the Probate Court's August 12, 2016 Decree for the following reasons:

- a. The Probate Court erred when it denied approving Ms. Bochicchio's May 6, 2016 Financial Report and June 17, 2016 Amended Financial Report;
- b. The Probate Court erred when it removed Ms. Bochicchio as Trustee of the Trust; and
- c. Had the Probate Court not erred, had the Probate Court properly approved the May 6, 2016 Financial Report and June 17, 2016 Amended Financial Report, and had the Probate Court not removed Ms. Bochicchio as Trustee of the Trust, Ms. Bochicchio would still be able to administer the Trust pursuant to her mother's wishes.

**IV. REASONS FOR APPEAL:**

- 23. The Probate Court erred when it removed Ms. Bochicchio as Trustee.
- 24. The Probate Court erred when it removed Ms. Bochicchio based on a purported oral decree, in contradiction to Probate Court Rules of Procedure § 3.3, which states that "Decrees shall be in writing. The court shall memorialize each oral ruling in writing."
- 25. The Probate Court erred when it did not approve the May 6, 2016 Financial Report.
- 26. The Probate Court erred when it did not approve the June 17, 2016 Amended Financial Report.

**V. REQUEST FOR RELIEF:**

Ms. Bochicchio respectfully requests judgment and relief as follows:

1. Reverse the Probate Court's August 12, 2016 Decree;
2. Reinstate Ms. Bochicchio as Trustee of the Trust;
3. Approve the May 6, 2016 Financial Report; and
4. Approve the June 17, 2016 Amended Financial Report.

THE APPELLANT,  
GINGER BOCHICCHIO

BY:  \_\_\_\_\_

Carmine Perri  
Taylor Equi  
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Juris No.: 434367

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**STATEMENT OF RELIEF SOUGHT**

Pursuant to Practice Book § 10-27, the Appellant hereby states that the relief sought is equitable in nature.

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**CERTIFICATION**

Pursuant to Connecticut General Statutes § 45a-186(b), the Appellant hereby serves a copy of the Complaint on the following Interested Parties:

Miles C. Borzilleri, Trustee of the Helen M. Bochicchio Revocable Trust  
Torrington Savings Bank, Trust Dept.  
8 Church Street  
Torrington, CT 06790

Heidi Barker, Conservator of Michael Bochicchio  
475 Park Road  
Watertown, CT 05795

Bruce Bochicchio  
3130 Caney Estates Place  
Cumming, GA 30041

Gina Marie Mucherino  
6 Pond View Drive  
Oxford, CT 06478

Karlyn Bochicchio  
55000 Highway 1  
Big Sur, CA 93920

Gianna Bochicchio  
935 Timber Lake Trail  
Cumming, GA 30041

Anthony Bochicchio  
935 Timber Lake Trail  
Cumming, GA 30041

Christine Bochicchio  
8145 Majors Mill Rd  
Cumming, GA 30041

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GINGER BOCHICCHIO

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# **EXHIBIT A**

STATE OF CONNECTICUT  
COURT OF PROBATE

RECORDED:

COURT OF PROBATE, Litchfield Hills Probate Court

DISTRICT NO. PD24

ESTATE OF/IN THE MATTER OF

Helen M. Bochicchio Revocable Trust dated April 25, 1994 as restated April 5, 2004, amended February 13, 2009, late of Litchfield (16-00032)

At a court of probate held at the time and place of hearing set by the Court, together with any continuances thereof, as of record appears, on the petitioner's application for Removal of Trustee AND approval of the Interim Financial Report for the period 04/17/2014 to 03/31/2016.

PRESENT: Hon. Diane S. Blikk, Judge

After due hearing, THE COURT FINDS that:

Notice was given in accordance with any order of notice previously entered.

Present at the hearing were: Attorney Steven H. Levy (Attorney for Bruce A. Bochicchio), Attorney Martin J. Lawlor, Jr. (Attorney for Ginger Bochicchio) and Ginger Bochicchio.

The Court FINDS THAT:

On, January 14, 2016, Attorney Steven H. Levy, filed on behalf of his client, Bruce Bochicchio, a Petition to compel the Trustee, Ginger Bochicchio, to file an Inventory, Accounting and back-up documentation to establish the administration of the Trust and to request the Trustee to distribute the trust assets in accordance with the terms of the Trust.

At a hearing on March 4, 2016 to compel the Trustee, Ginger Bochicchio, to produce an accounting as Trustee, the Court Ordered Ginger Bochicchio to file a first and final accounting within sixty (60) days from the date of the decree for her activity as Trustee for the period April 17, 2014 through March 1, 2016.

On May 6, 2016, the Trustee filed a Financial Report showing her activity as Trustee for the period April 17, 2014 through March 31, 2016.

On May 13, 2016, Attorney Robert A. Salerno, on behalf of his client Bruce Bochicchio, filed a Petition to Remove Trustee of the Helen M. Bochicchio Revocable Trust dated April 25, 1994 as restated April 5, 2004 and amended February 13, 2009.

The Petition received on May 13, 2016 indicated that:

1. Bruce Bochicchio is a beneficiary under the Helen M. Bochicchio Revocable Trust Agreement dated April 25, 1994 as restated April 5, 2004 and as Amended and that he has an interest in the Trust;
2. The Grantor, Helen M. Bochicchio, died on April 17, 2014, at which point the Trust terminated and should have been distributed;
3. Ginger Bochicchio is the Trustee and has not distributed the Trust;
4. By order dated March 4, 2016, the Trustee was Ordered to file by May 4, 2016 a First and Final Accounting for her activity as Trustee for the period April 17, 2014 through March 1, 2016;
5. The Trustee, instead of filing an accounting filed a Financial Report that simply lists figures and contains documentation of assets with valuations from 2014;
6. Removal of Ginger Bochicchio as Trustee was requested and the Court was further requested to appoint a suitable new Trustee to prepare the Accounting and to ultimately distribute the Trust.

Connecticut General Statutes Section 45a-242 states that: "The court of probate having jurisdiction may, upon its own motion or upon the application and complaint of any person interested or of the surety upon the fiduciary's probate bond, after notice and hearing, remove any fiduciary if: (1) the fiduciary becomes incapable of executing such fiduciary's trust, neglects to perform the

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duties of such fiduciary's trust, wastes the estate in such fiduciary's charge, or fails to furnish any additional or substitute probate bond ordered by the court, (2) lack of cooperation among co-fiduciaries substantially impairs the administration of the estate, (3) because of unfitness, unwillingness or persistent failure of the fiduciary to administer the estate effectively, the court determines that removal of the fiduciary best serves the interests of the beneficiaries or (4) there has been a substantial change of circumstances or removal is requested by all of the beneficiaries, the court finds that removal of the fiduciary best serves the interests of all the beneficiaries and is not inconsistent with a material purpose of the governing instrument and a suitable co-fiduciary or successor fiduciary is available."

**The COURT FURTHER FINDS THAT:**

Michael L. Bochicchio died on November 13, 2013.

The Grantor, Helen M. Bochicchio, died on April 17, 2014.

Article III (B) of the Helen M. Bochicchio Revocable Trust document as amended February 13, 2009, states that upon the death of the Grantor:

"(B) If Michael L. Bochicchio, Sr., predeceases the Grantor, the entire trust estate shall be divided into three (3) equal shares which shall be distributed as follows:

- (1) ONE SHARE to the Grantor's daughter, GINGER BOCHICCHIO,
- (2) ONE SHARE to the Grantor's son, BRUCE A. BOCHICCHIO, and
- (3) ONE SHARE to be divided equally among the Grantor's grandchildren..."

Upon the death of the Grantor, the trust has not been terminated by the Trustee and the beneficiaries have not received distribution of the assets of the trust estate.

The Financial Report submitted on May 6, 2016 by the Trustee failed to provide a complete and acceptable accounting of her activity as Trustee and has failed to substantiate the expenses of the Trust.

The Accounting filed by the Trustee on May 6, 2016 covering the period April 17, 2014 through March 31, 2016 is not accepted nor approved.

At the hearing on June 17, 2016, Attorney Lawlor, presented the Court with a corrected Financial Report covering the period April 17, 2014 through March 31, 2016. Review of that Financial Report reveals that the accounting is grossly inaccurate, is less transparent than the Financial Report filed on May 6, 2016 and does not accurately reflect the activity of the Trustee. The corrected accounting is not acceptable.

At the hearing, the Court **ORDERED** the Trustee to file with the Court within 30 days of the date of the hearing, a complete accounting of the activity of the Trustee for the period April 17, 2014 through March 31, 2016.

As of the date of this Decree, the Trustee has not filed an acceptable and complete accounting of her activity as Trustee for the period April 17, 2014 through March 31, 2016 as Ordered at the June 17, 2016 hearing.

On August 12, 2016, Attorney Lawlor, on behalf of his client, Ginger Bochicchio, faxed a letter to the court indicating his client has made distributions to beneficiaries of the trust. There is no accounting for the activity of the Trustee nor any computation substantiating by which distributions have been made.

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The Trustee gave testimony that her interpretation of the trust document was that upon the death of the Grantor there was no specific time by which she needed to make distribution. That interpretation flies in the face of the Grantor's direction in the trust document that upon her death, if her husband had predeceased, distribution shall be made as directed in Article III (B) of the trust document as stated above.

The Trustee gave testimony that she is trying to collect on a loan from her parents to Bruce A. Bochicchio, which loan was never included in either of the estates of Helen Bochicchio or Michael L. Bochicchio, Sr.

The Trustee gave testimony that she is still trying to negotiate bills of her parents, bills which were not reported as claims against either of their estates.

Based on the evidence and financial reports presented and testimony of the Trustee at the hearing, the failure of the Trustee to perform the duties of the Trust, the failure of the Trustee to provide a complete and accurate accounting of her activity as Trustee for the period April 14, 2014 through March 31, 2016, failure of the Trustee to substantiate the expenses in the Financial Report, the failure of the Trustee to properly administer the trust by terminating the trust upon the death of the Grantor, and failure of the Trustee to make distribution of the assets in accordance with the trust, it is clear and convincing to the Court that in accordance with C.G.S. 45a-242 removal of the Trustee best serves the interests of all the beneficiaries and is not inconsistent with a material purpose of the governing instrument.

Article II (A) of the Trust document names Michael L. Bochicchio, Jr., and Bruce A. Bochicchio as Co-Trustees in the event Ginger Bochicchio is unable to serve, chooses not to serve or commences to serve but becomes unable to continue for any reason.

Michael L. Bochicchio, Jr., predeceased the Grantor and Bruce A. Bochicchio is not willing to serve.

Attorney Levy, on behalf of his client, Bruce A. Bochicchio, advocated that an independent successor trustee would be an appropriate and a preferred appointment.

The appointment of an independent successor trustee would be appropriate and a suitable successor Trustee is available and willing to accept the appointment.

On August 12, 2016, Torrington Savings Bank, acting therein by Miles Borzilleri, its Senior Vice President and Trust Officer, has agreed to accept the appointment as Successor Trustee.

**IT IS ORDERED AND DECREED THAT**

Acceptance and approval of the Financial Report of the Trustee filed May 6, 2016 is hereby **DENIED**.

The corrected Financial Report of the Trustee filed at the hearing on June 17, 2016 is **NOT ACCEPTED**.

The Petition to Remove the Trustee is hereby **APPROVED**.

Ginger Bochicchio is hereby immediately removed as Trustee.

The appointment of Torrington Savings Bank as Successor Trustee is hereby **APPROVED**.

The court dispenses with the requirement of a probate bond because the trustee is excused by the will from giving bond, or the trustee is a bank or trust company duly qualified according to law.

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Ginger Bochicchio is hereby ordered to immediately cease expending or distributing assets of the trust estate.

Based on the letter of Attorney Lawlor of August 12, 2016, Michael Bochicchio's funds are being held.

Ginger Bochicchio is hereby ordered NOT to distribute those or any funds to Michael Bochicchio but to turn over to the Successor Trustee all of those funds.

Ginger Bochicchio is hereby ordered NOT to make any other transfers or distributions of any kind to any beneficiary or creditor of the trust.

Ginger Bochicchio is hereby ordered NOT to pay any invoices, outstanding or otherwise, related to any liquid assets of the trust or any real estate in the trust.

Ginger Bochicchio shall immediately turn over to Miles Borzilleri, Senior Vice President and Trust Officer at Torrington Savings Bank all assets of the trust estate including, but not limited to keys to the house, keys to any automobiles, cash, investment accounts, bank accounts, stocks, financial and banking statements and records, electronic accounts, bank statements, funds proposed to be distributed to Michael Bochicchio and passwords to all accounts requiring a password.

Ginger Bochicchio shall file with the Court within 30 days of the date of this decree a First and Final Accounting of her activity as Trustee for the period April 14, 2014 to August 12, 2016, the date of her removal as Trustee. Ginger Bochicchio is personally liable for her activity as Trustee for the period April 14, 2014 through August 12, 2016.

Torrington Savings Bank shall, within 60 days of the date of this Decree, file an Inventory of all assets of the trust estate which it receives as a result of its appointment as Successor Trustee. It is the responsibility of the Successor Trustee to account for only those assets which it receives commencing from the date of its appointment as Successor Trustee to the filing and acceptance of its ultimate final account as such Successor Trustee.

dated at Litchfield, Connecticut, this 12<sup>th</sup> day of August, 2016.

  
Diane S. Blick, Judge